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Lessons from the 2024 Proxy Season and Trends for 2025

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Roadmap

In this webinar, we will focus on the following topics:

1. Overarching Themes from the 2024 U.S. Annual Meeting Proxy Season
2. Notable Trends in Rule 14a-8 Shareholder Proposals
   - *Targets and Proponents*
   - *Exclusionary Relief—SEC No-Action and Beyond*
   - *Proposal Trends by Topic: Governance, Social/Political, Environmental and Compensation*
3. Compensation-Related Matters
   - *Say-on-Pay*
   - *Say-on-Director-Pay*
   - *Equity Compensation Plan Voting*
4. Considerations for the 2025 Proxy Season

1 Overarching Themes from 2024 U.S. Annual Meeting Proxy Season

Key Themes

Active Company/Shareholder Engagement

Robust Proponent Engagement
Rule 14a-8 proposals continued to increase in terms of both absolute numbers and in the number of companies with a proposal on the ballot

Engagement Outside of Rule 14a-8
Proponents also engaged using less conventional and more high-profile tactics, such as "floor" proposals and the first ESG-focused universal proxy contest

Companies Less Willing to Settle
Unlike prior years, companies were less likely to settle on sensitive E&S issues, preferring to let these issues go to a vote or seek exclusionary relief

- More proposals
- More companies targeted
- Fewer settlements
- More no-action requests
- Low overall support

Active Legal/Regulatory Landscape

Impact of Judicial Developments
Recent (e.g., *Harvard*) Supreme Court decisions influenced the engagement focus of shareholders, political actors and other stakeholders

Regulatory Focus on "Hot Topics"
The SEC adopted its long-awaited climate disclosure rules and demonstrated focus on topics such as human capital management and AI; these trends impacted engagement on the "hot topics" of this proxy season

Institutional Investors/Proxy Advisor Headwinds
State and federal-level scrutiny on institutional investors and proxy advisory firms continues to intensify, with ISS, Glass Lewis and the "Big 3" facing subpoenas and even lawsuits for their ESG-related policies and activities

Key Statistics – Rule 14a-8

- The number of Rule 14a-8 proposals submitted to S&P Composite 1500 companies reached over 850 for the first time in the core proxy season
  - Unions and "anti-ESG" proponents submitted ~200% and >20% more proposals, respectively
- Governance proposals increased for the first time in recent years while E&S proposals plateaued
  - Governance submissions increased by 13%; passing proposals increased by 193%
  - Social/political proposals remained the largest category of submissions, with 44% of submissions focused on issues related to diversity; average support declined across all topics and only 1 passed
  - Environmental submissions remained level overall, but proposals from "anti-ESG" proponents significantly increased; average support increased excluding proposals from "anti-ESG" proponents
  - Compensation proposals, which saw a 60% increase last year, increased by a further 5%; but none passed

	Shareholder Proposals Submitted		***Shareholder Proposals Voted On***		***Average % of Votes Cast in Favor***		***Shareholder Proposals Passed***	
Type of Proposal	***H1 2024***	***2023***	***H1 2024***	***2023***	***H1 2024***	***2023***	***H1 2024***	***2023***
Social/Political	***365***	389	***249***	233	***15%***	18%	***1***	5
Governance	***244***	229	***150***	188	***42%***	30%	***41***	17
Environmental	**170**	187	**87**	99	***17%***	21%	**2**	2
Compensation	***79***	84	***60***	71	***14%***	21%	***0***	4
Total	***858***	***889***	***546***	***591***	***23%***	***23%***	***44***	28

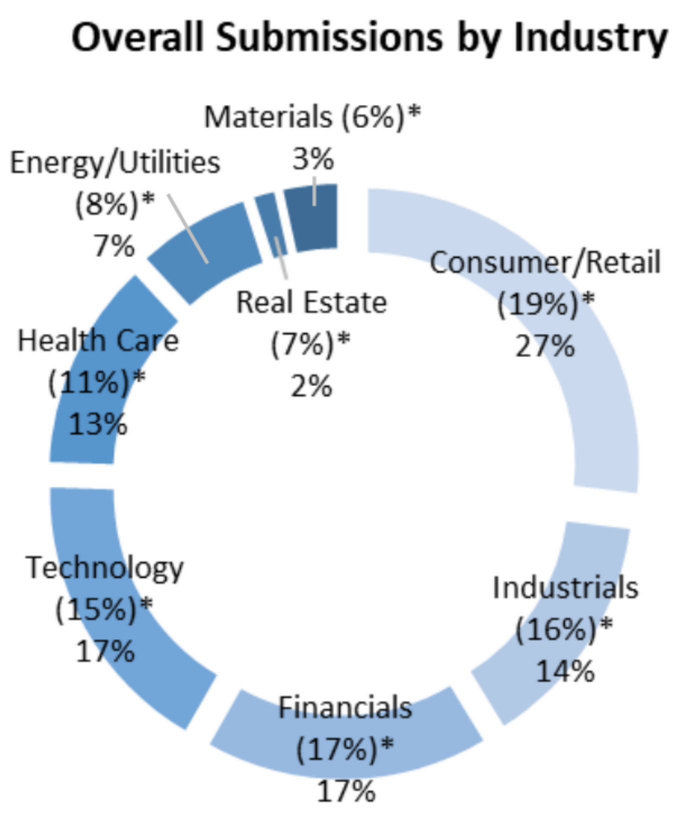
Key Statistics – Compensation

- Support for management say-on-pay proposals remained high (average of ~90%)
  - The number of failed say-on-pay votes reached a 10-year low across both the S&P 500 and the Russell 3000
  - Among the S&P 500, companies in the technology sector had the lowest average support (87%) and companies in the energy/utilities sector had the highest average support (93%); the only S&P 500 companies with failed votes were in the technology and industrial sectors
  - Compared to proposals ISS supported, proposals with negative recommendations received 27% and 23% lower support on average, respectively, at S&P 500 and Russell 3000 companies
- Companies received 6 proposals requesting binding shareholder approval of director compensation
  - These proposals were all excluded through the SEC no-action process on the basis of "violation of law"
- Shareholder support for equity compensation plans was consistent with H1 2023 (average of ~90%)
  - All plans passed among the S&P 500 and 5 failed among the Russell 3000 (same as H1 2023)

2 Notable Trends in Rule 14a-8 Shareholder Proposals

Targets

- Shareholders were asked to vote on Rule 14a-8 proposals at 279 individual companies (vs. 262 companies in H1 2023 and 233 in H1 2022)
  - 40 companies received 5+ proposals and 11 companies received 10+ proposals
  - Large-cap companies continued to receive the vast majority of shareholder proposals and accounted for almost all (88%) voted Rule 14a-8 proposals
  - Proposals on novel topics (e.g., AI) were focused at large cap companies
  - Although proposals were less likely to reach a vote at small- and mid-cap companies than at large-cap companies (51% of submissions vs. 66%), voted proposals at the smaller companies received higher support (30% of votes cast on average vs. 22%)
- Consumer goods/retail companies received by far the largest number of proposals overall, followed by tech and financial services companies
  - Submissions at energy/utilities companies decreased, driven by a decrease in environmental submissions (with environmental proposals comprising 14% of total submissions at these companies vs. 32% in H1 2023)



* % of S&P Composite 1500 companies in industry

Proponents

- Proposals from the top 10 proponents once again accounted for substantial majority of submissions
  - Individual proponents submitted 29% of Rule 14a-8 proposals, including 61% of governance submissions
  - Social investment entities remained the primary drivers of environmental proposals, although their cumulative submissions decreased this year
  - Public pension funds were less active than they have been in previous years, possibly due in part to laws adopted in over 20 states restricting use of ESG-related factors by public pension fiduciaries in investment and voting decisions

	Top 10 Proponents					
	Named Filers	**Total**	**Social/Political**	**Governance**	**Environmental**	**Compensation**
1	**John Chevedden**	**199**	38	102	8	51
2	**As You Sow**	**70**	24	0	43	3
3	**National Center for Public Policy Research**	**54**	31	9	14	0
4	**Kenneth Steiner**	**51**	4	34	0	13
5	**Carpenters Union**	**38**	0	38	0	0
6	**Mercy Investment Services**	**37**	21	1	15	0
7	**Green Century Capital Management**	**32**	1	1	30	0
8	**James McRitchie/Myra Young**	**31**	11	17	2	1
9	**NYC/NYS Retirement**	**30**	15	3	10	2
10	**National Legal and Policy Center**	**29**	16	5	5	3

Proponents – Robust Union Activity

- In the months following the high-profile strikes by the United Auto Workers, the Writers Guild of America and the Screen Actors Guild-American Federation of Television and Radio Artists, unions used a variety of methods to further amplify their messaging through the proxy process

- Rule 14a-8 proposals from union proponents increased by nearly 200% year over year
  - In prior years, no individual union ranked in the top 10 proponents
  - This year, the carpenters unions ranked fifth on the list of top proponents, submitting 38 proposals requesting more stringent director resignation requirements for directors that fail to achieve majority support in an uncontested election
  - Other unions also submitted more proposals than they did last year, focusing on social/political and environmental topics (e.g., "just transition", labor, human capital management)

- In addition to Rule 14a-8 proposals, unions took advantage of universal proxy and "floor" proposals
  - Universal Proxy: The Strategic Organizing Center ("SOC"), a coalition of North American labor unions, commenced the first ESG-focused proxy fight since the adoption of the SEC's universal proxy rule
  - "Floor" Proposals: A group of unions led by the United Mine Workers of America ("UMWA") submitted "floor" proposals at Warrior Met Coal—these proposals are not subject to the "one proposal per proponent" and other requirements under Rule 14a-8; the unions were able to get all 5 proposals on the ballot

Proponents – Engagement from "Anti-ESG" Proponents

- Proposals from "anti-ESG" proponents, which more than tripled between 2021 and 2023, increased by a further 21%
  - For the first time, proposals from "anti-ESG" proponents exceeded 100
  - Shareholder support remained low, generally at less than 2% of the vote
- Proposals from the National Center for Public Policy Research ("NCPPR"), which has been a frequent proponent for many years, and the National Legal and Policy Center ("NLPC"), which became a frequent proponent in 2022, accounted for 13% of all social/political proposals and 11% of all environmental proposals in H1 2024
  - <u>Social proposals</u>: Focused on DEI programs and policies, including proposals regarding the risks of omitting viewpoint and ideological diversity from EEO policies and on risks created by corporate DEI efforts
  - <u>Environmental proposals</u>: Centered around board oversight of corporate financial sustainability and the risks of voluntary carbon-reduction commitments, including the impact of greenhouse gas ("GHG") reduction policies on revenue generation
- "Anti-ESG" proponents continued to target larger and more high-profile companies
  - Proponents continued their focus on financial services companies (31% of submissions vs. 25% in H1 2023), consumer goods/retail companies (29% vs. 28% in H1 2023) and technology companies (20% vs. 19% in H1 2023)
- Settlements between companies and "anti-ESG" proponents remained rare
  - Companies continued to request exclusion of proposals from "anti-ESG" proponents at a higher rate, submitting no-action requests in connection with 43% of proposals from "anti-ESG" proponents, compared to 25% for others

SEC No-Action

- Since the 2022 proxy season, there has been a decrease in the number and success of SEC no-action requests
  - Staff Legal Bulletin No. 14L raised the bar for excluding proposals on the basis of "ordinary business"
  - SEC also proposed amendments to Rule 14a-8 that would further limit the availability of substantive bases for excluding proposals, specifically under the "substantial implementation," "duplication" and "resubmission" bases
  - Last proxy season, no-action requests decreased by 26%, as companies became hesitant to submit no-action requests on substantive bases
- This year, no-action requests rebounded
  - Requests increased by 45% year over year, with a 62% increase in requests on substantive bases
- The increase was more pronounced for requests that cited substantive bases that were not frequently used in prior years
  - Requests based on "violation of law" and "violation of proxy rules" increased by 338% and 140%, respectively
- The number of successful no-action requests increased by 76% compared to H1 2023, leading to a decrease in voted proposals for the first time in recent years
  - Overall, companies achieved a success rate of 67%, up from 54% for H1 2023 and 38% for H1 2022
  - Last year, proposals by "anti-ESG" proponents were over twice as likely to be excluded relative to proposals from other proponents; this proxy season, the success rate for no-action requests to exclude proposals by "anti-ESG" proponents decreased to 41% (vs. 76% for H1 2023), lower than the success rate (74%) for other proposals

Exxon's Lawsuit to Exclude GHG Proposal

- On January 21, 2024, Exxon filed a lawsuit against the two co-filers of a proposal requesting that the company set medium-term GHG emissions reduction targets for Scope 1, 2 and 3 emissions
    - Instead of submitting a SEC no-action request, Exxon sought a declaratory judgment in the Northern District of Texas to exclude the proposal on the basis of "resubmission" and "ordinary business"
    - Exxon had received proposals on this topic from these co-filers, Arjuna/Follow This, in 2022 and 2023
- On February 2, 2024, Arjuna and Follow This withdrew their proposal
- On May 22, 2024, the court ruled that Exxon could continue its lawsuit against Arjuna, but dismissed Exxon's claims against non-U.S. Follow This
- Arjuna then filed a letter with the court, promising to refrain from submitting any future proposals to Exxon shareholders related to GHG emissions or climate change
- Although Exxon argued that the case was not mooted by Arjuna's letter, the court disagreed and dismissed Exxon's lawsuit without prejudice on June 17, 2024

Governance Proposals

- After steadily declining over the last 5 years, submissions on governance topics increased by 13% from H1 2023
  - Over 80% of the governance proposals targeted S&P 500 companies, with no particular industry focus
- Voted proposals dropped by 16%, driven by a high number of successful no-action requests
  - 84% of no-action requests on governance proposals were successful, resulting in a quarter of these proposals being excluded
- Voted governance proposals received significantly higher average shareholder support than any other category (42% vs. 15% across all other categories)
  - Average shareholder support increased by 10% after a three-year decrease, and pass rate reached record high

	GOVERNANCE							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2024	2023	H1 2024	2023	H1 2024	2023	H1 2024	2023
Structural Governance	**157**	103	**95**	81	**51%**	34%	**39**	16
Director Resignation	**43**	0	**13**	0	**17%**	-	**0**	0
Advanced Notice	**11**	22	**1**	12	**2%**	16%	**0**	0
Supermajority	**47**	14	**40**	12	**73%**	54%	**30**	7
Board Composition	**45**	95	**39**	87	**30%**	30%	**0**	0
Independent Chair	**42**	88	**36**	82	**31%**	30%	**0**	0
Misc. Governance	**42**	31	**16**	20	**14%**	16%	**2**	1

Governance Proposals – 4 Key Takeaways

1. Resurgence of Proposal to Eliminate Supermajority Voting Requirements

- Proposals on this topic increased by 236% compared to last year, with 26% targeting small- and mid-cap companies (vs. 14% last year)
- Companies managed to exclude 5 of these proposals through the no-action process, 2 on procedural grounds and 3 on the basis of "substantial implementation"
- Support averaged 73%, and 75% of voted proposals passed—the only failing proposals were at companies that recently removed supermajority voting provisions

2. Low Success of Proposals on Director Resignation Bylaws

- Over 80% of S&P 500 companies have adopted majority voting in uncontested elections, and many of these companies have "market" provisions in their governance documents giving boards flexibility to exercise discretion when a director fails to achieve majority support
- This year, various carpenters unions submitted nearly 40 proposals requesting that companies adopt bylaws limiting such board discretion
- 19 of the union-led proposals were excluded through the SEC no-action process, 14 based on violation of Delaware law
- Of the 13 proposals that went to a vote, support ranged from 10% to 26%

Governance Proposals – 4 Key Takeaways

(Continued)

3. **Continued Scrutiny of Advance Notice Bylaws**
   - Recent Delaware decisions on post-universal proxy advance notice bylaw amendments continue to amplify scrutiny on such bylaws
   - Proponents focused on "fair treatment of shareholder nominees" this proxy season, submitting 11 proposals on this topic
   - Only one "fair treatment" proposal reached a vote, with all others being withdrawn (generally after the company agreed to add disclosure language that the board will focus on assessing shareholder nominees' qualification to serve, rather than their "suitability")

4. **Record Low Submissions Independent Chair and Other Board Composition Proposals**
   - Board composition proposals reached a 10-year low (down 51% from H1 2023), mainly due to a significant decrease in independent chair proposals

Social/Political Proposals

- Social/political proposals have plateaued after more than doubling between 2012 and 2023
  - Over half of these proposals targeted S&P 100 companies; consumer/retail companies received a disproportionately high percentage (34%)
- Voted proposals increased, with 68% of proposals going to a vote due to decreased likelihood of withdrawal and low success of no-action relief
  - These factors had the greatest impact on the financial sector, where voted proposals increased by 57% compared to last year
- Average shareholder support for social/political proposals continued to decrease
  - Although the overall decrease in average shareholder support was only 3%, there were more significant declines on "hot topics" such as diversity/anti-discrimination and human capital management

	SOCIAL/POLITICAL							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2024	2023	H1 2024	2023	H1 2024	2023	H1 2024	2023
Social Capital Management	101	114	64	84	12%	13%	0	0
Diversity/Anti-discrimination	100	122	73	61	13%	18%	0	3
Political Spending/Lobbying	81	93	62	54	21%	24%	1	0
Human Capital Management	54	34	29	20	17%	29%	0	2
Artificial Intelligence	13	1	10	1	20%	21%	0	0
Reproductive Rights	10	25	7	13	7%	10%	0	0

Social/Political Proposals – 5 Key Takeaways

1. **Post-*Harvard*, Diversity Proposals Received Lower Support**
   - In the first full proxy season after the *Harvard* decision, proponents continued to submit a substantial number of proposals
   - "Anti-ESG" proponents submitted more diversity-related proposals than ever, representing 36% of submissions (vs. 21% last year) on this topic
   - There was a sharp increase in the percentage of submissions that reached a vote (73% vs. 50% last year)
   - Proposals on this topic were once the most highly supported social/political proposals (>40% in 2021), but this year received among the lowest support levels in the category (13%, 22% excluding proposals from "anti-ESG" proponents)

2. **Increased Submission of and Decreased Support for Labor and Human Capital Management Topics**
   - Union activity this proxy season contributed to a 51% increase in labor and other non-DEI human capital management proposals (e.g., collective bargaining, employee health/safety, living wage)
   - Against the backdrop of increased stakeholder activism and regulatory focus in this area, support for these proposals fell by 12% on average

3. **Emerging Focus on AI**
   - In the 2024 proxy season, AI-related proposals constituted only a small percentage of submissions (13 total), with 8 proposals seeking additional disclosure on AI use and 2 seeking clarity on AI-related governance at the board and management levels
   - However, given the recent regulatory focus on AI and related risks, we expect scrutiny on this topic to grow over the coming years

Social/Political Proposals – 5 Key Takeaways

(Continued)

4. Steady Increase in Business Human Rights Proposals

- Submissions on business human rights issues have increased slowly over recent years, reaching 25 proposals this proxy season
- 9 proposals requested audits of companies' human rights policies and impacts, and 4 specifically focused on supply chain child labor issues
- In light of regulatory developments such as the EU's Corporate Due Diligence Directive, companies were less willing to settle these proposals

5. Decrease in Political Spending/Lobbying Proposals

- Political spending and lobbying proposals remained one of the most prevalent topics this proxy season, but decreased compared to the same period last year
- This continued the trend we have observed over the last 3 election cycles, where submissions on political spending and lobbying hit troughs in election years but peaked around mid-terms
- Although average support decreased by 3% compared to last year, 1 proposal passed whereas none passed in 2023
- Political "congruency" proposals continued to decline in number and in support levels

Environmental Proposals

- Environmental proposals also plateaued after significant year-over-year increases in prior years
  - Companies in the energy/utilities sector were no longer the primary targets in this category—this sector received 14% of environmental proposals (vs. 32% in 2023)
  - Environmental proposals at consumer/retail companies more than doubled those at energy/utilities companies this year, in part due to a 45% increase in proposals on nature/biodiversity impacts and supply chain sustainability
- Only 50% of environmental proposals reached a vote (similar to last year), the lowest across all categories
- Average support decreased to 17% overall (vs. a high of 41% in 2021)
  - However, GHG proposals that did not specifically include requirements related to Scope 3 (indirect value chain) emissions achieved meaningfully higher success when voted, resulting in the only 2 passing environmental proposals this year

	ENVIRONMENTAL							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2024	2023	H1 2024	2023	H1 2024	2023	H1 2024	2023
Specific Climate	***101***	134	***55***	70	***19%***	24%	***2***	2
GHG Target	***47***	73	***32***	33	***19%***	13%	***1***	0
GHG Reporting	***28***	21	***9***	13	***29%***	32%	***1***	1
Nature	***36***	27	***13***	11	***14%***	21%	***0***	0
Just Transition	***16***	11	***6***	8	***19%***	22%	***0***	0
Board Oversight	***8***	7	***7***	7	*8%*	5%	***0***	0
Supply Chain Sustainability	***6***	2	***5***	1	*12%*	14%	***0***	0

Environmental Proposals – 3 Key Takeaways

1. Shareholder Support Diverged Depending on Whether a Climate Proposal Included Scope 3

- Although the majority of environmental proposals (59%) once again focused on climate-related issues, the total number of climate-related submissions decreased by 25%
- Voted proposals from "anti-ESG" proponents on the impacts of voluntary GHG targets or similar climate commitments increased by 550% year over year, but received only 2% of votes cast on average
- Excluding these proposals, average support on this year's climate proposals was level with 2023 support at 21% of votes cast

Reporting vs. target-setting

- Climate reporting proposals increased by 33% despite consistent declines in prior year, likely as a result of emerging regulations mandating such disclosures in the near future
- In contrast, target-setting proposals decreased by 36%, perhaps as a result of increasing pressure from state attorneys general and "anti-ESG" groups
- 68% of target-setting proposals went to a vote vs. 32% of reporting proposals

Scope 3

- The number of target-setting proposals that included Scope 3 emissions decreased by 61%, while proposals that did not include Scope 3 increased by 57%
- Whereas 2023 saw three times the number of reporting proposals including Scope 3 compared to ones that did not, 2024 submissions were much more evenly split
- For both GHG target-setting and reporting proposals, those that referenced Scope 3 emissions saw a 3% decline in average support, while those that did not reference Scope 3 saw 18% and 31% increases, respectively, with 2 gaining majority support

Environmental Proposals – 3 Key Takeaways

(Continued)

2. **Increased Submissions on Nature-Related Topics Reflected Recent Global Momentum in This Area**
   - Nature-related proposals increased by 33% year over year, accounting for 21% of all environmental proposals submitted in H1 2024, compared to 14% in 2023
   - Proposals ranged from water pollution to deforestation, waste and plastics; we also saw a new proposal, submitted at 7 consumer/retail companies, requesting that the companies conduct biodiversity impact assessments
   - Proponents were willing to have a dialogue with companies, withdrawing more than half these proposals (including the majority of the biodiversity impact assessment proposals and all the single-use plastics proposals) in 2024
   - Although the voted proposals received only 14% of votes cast on average, we expect continued engagement between companies and investors in this area in the coming years, in light of growing interest from regulators, shareholders and other key stakeholders

3. **“Just Transition” Proposals Increased by 50% But Were Likely to Be Withdrawn**
   - There were 16 proposals on the social impact of companies’ environmental initiatives, targets and commitments (vs. 10 in H1 2023), including 10 requesting “just transition” reports
   - Submissions were driven by Teamsters and other unions
   - Proponents and companies were more willing to negotiate these proposals than they were last year; less than half of these proposals went to a vote this year (vs. 80% last year)
   - Support for voted proposals declined by 3% on average (to 19%)

Compensation Proposals

- Last proxy season, there was a 60% increase in compensation proposals, driven by John Chevedden's "2.99x severance" proposal
  - This year, severance remained the most prevalent topic in compensation proposals
  - In the first proxy season after companies were required to adopt and disclose a clawback policy, the number of clawback proposals tripled
- Average support dropped to 14%, continuing a downward trend after reaching a record high of 30% in 2022; none passed
- For the first time, "anti-ESG" proponents submitted a meaningful number of proposals to rescind or reevaluate incentives linked to GHG target and other performance metrics

	COMPENSATION							
	Shareholder Proposals Submitted		Shareholder Proposals Voted On		Average % of Votes Cast in Favor		Shareholder Proposals Passed	
	H1 2024	*2023*	*H1 2024*	*2023*	*H1 2024*	*2023*	*H1 2024*	*2023*
Severance	***32***	49	***29***	42	***15%***	24%	***0***	4
Clawbacks	***12***	4	***8***	3	***17%***	37%	***0***	0
Compensation – Social	***11***	7	***9***	8	***8%***	10%	***0***	0
Compensation – Environmental	***4***	7	***3***	5	***7%***	8%	***0***	0
Stock Retention	***6***	10	***6***	9	***28%***	21%	***0***	0

3 *Compensation-Related Matters*

Overview of Say-on-Pay Votes

- Public companies continued to perform strongly on say-on-pay, with overall support levels averaging 90% among the S&P 500 and 91% among the Russell 3000 (up slightly compared to 88% and 90%, respectively, in H1 2023)
- Fewer companies failed compared to last year both among the S&P 500 (3 vs. 11 in H1 2023) and Russell 3000 (26 vs. 44 in H1 2023); the number of failed votes reached a ten-year low across both the S&P 500 and Russell 3000
- Continued turnover in failed votes, particularly among S&P 500 companies, with 100% of S&P 500 companies that failed last year achieving majority support, 85% of Russell 3000 companies that failed last year achieving majority support and 60% of Russell 3000 companies that failed last year achieving over 70% support

	S&P 500		Russell 3000	
	H1 2024	*2023*	*H1 2024*	*2023*
Percentage passed (majority support)	***99%***	*97%*	***99%***	*98%*
Percentage with >70% support	***95%***	*93%*	***94%***	*94%*
Percentage with ISS "Against" recommendations	***8%***	*9%*	***6%***	*12%*
Average support overall	***90%***	*89%*	***91%***	*91%*
Average support with ISS "For" recommendations	***92%***	*92%*	***92%***	*94%*
Average support with ISS "Against" recommendations	***65%***	*60%*	***69%***	*68%*

Update on ISS Analysis

S&P 500 Companies with Negative ISS Recommendations	H1 2024	H1 2023
Total with negative recommendations	34	43
Number that had "high concern" on:		
Pay-for-Performance	31	39
Compensation Committee Communication and Responsiveness	6	10
Severance/Change-in-Control Arrangements	4	2
Non-Performance-Based Pay Elements	1	2
Peer Group Benchmarking	1	1

- Although pay-for-performance is just one factor in the overall compensation assessment, it remained the main factor correlating to ISS's negative recommendation on say-on-pay, as has been the case in recent years
- ISS continues to begin its analysis with the quantitative factors (which were slightly modified in December 2023) in issuing negative recommendations on say-on-pay
- The most frequently cited qualitative factor in ISS's negative recommendations this year centered on above-target payouts, which can be suggestive of weak performance standards (approximately 71% S&P 500 companies in H1 2024 vs. 47% in H1 2023); however, in many cases ISS did not specifically criticize the payouts, instead merely noting them as part of its overall assessment of performance-based consideration
- Inclusion of limited, opaque or undisclosed performance goals remained a significant qualitative factor underlying ISS negative recommendations this year (the percentage of companies that ISS criticized on the basis of this qualitative factor remained at approximately 56%)
- ISS was more focused on the use of subjective criteria for determining bonuses, or the use of discretion to increase an executive's compensation, than it had been in prior years (50% S&P 500 companies in H1 2024 vs. 37% in H1 2023)

Equity Compensation Plan Voting

- ISS recommended against approximately 29% of equity plan proposals in the case of Russell 3000 companies (same as H1 2023), but recommended against only 17% in the case of S&P 500 companies (vs. 10% in H1 2023)
- 5 Russell 3000 companies failed to obtain shareholder approval for an equity compensation plan
- Average support level for equity plan proposals at S&P 500 companies was 95% when ISS recommended “for” approval and 75% when ISS recommended “against” (vs. 93% and 70% in H1 2023)

	S&P 500		RUSSELL 3000	
Adoption or Amendment of Omnibus Stock Plans	H1 2024	2023	H1 2024	2023
Number of proposals voted on	***94***	*88*	**596**	*662*
Percentage with ISS “against” recommendations	***17%***	*13%*	**29%**	*31%*
Average level of support with ISS “for” recommendations	***95%***	*93%*	**94%**	*93%*
Average level of support with ISS “against” recommendations	***75%***	*69%*	**75%**	*76%*
Number of failed proposals (<50% support)	***0***	*0*	**5**	*6*

4 Considerations for 2025 Proxy Season

Expanded Playbook

- To remain ready for shareholder and stakeholder activism after this proxy season, companies may need to assess their preparedness for engagement mechanisms outside of the traditional "playbook"
  - The outcomes achieved by the unions this proxy season through less conventional mechanisms such as universal proxy and "floor" proposals may encourage proponents to increase their use of these and other tools in the coming proxy season
  - In some recent engagements, union proponents have indicated that they intend to continue active engagement in future proxy seasons, and have invited some of their target companies this proxy season to join a working group on governance
- Companies should understand what mechanisms are available for their shareholders to bring matters to a shareholder meeting, and consider clarifying or enhancing corporate governance documents or public disclosures as appropriate
  - For example, companies should review the timeline and procedural requirements for submitting "floor" proposals, as well as whether they have made or implied any commitment to include "floor" proposals in proxy statements
- In the face of increasingly unpredictable engagement on "hot topics", it is important for companies to have a company-specific strategy, even if that is a credible explanation of why a particular issue is not a priority for the company at this time
  - In this political and regulatory environment, institutional investors are likely to support management if they believe that management "has a plan", even if that plan deviates from what some stakeholder view as the "golden standard"
  - In contrast, a company is likely to attract investor and public backlash if management is perceived as defensive, reactive or, worse, ill-prepared

Social Media Activism

- Developments during and after the core 2024 proxy season demonstrate the importance of staying alert, both through stock ownership monitoring and other means
- In particular, companies should also consider monitoring unusual social media activity and engagement as a part of their activism preparedness protocol
  - After the core 2024 proxy season ended, several high profile retail companies, including Deere, Tractor Supply, Harley Davidson, Lowe's and Ford, announced changes to eliminate or reduce DEI-related initiatives after campaigns from conservative social media activist Robby Starbuck
  - Some frequent shareholder proponents also maintain active social media presence, including tagging companies off-cycle in position statements in order to "test the water" and attract attention for future proposals
- For some companies, it could make sense to develop or review a social media activism preparedness plan, including policies for commenting on, reposting, liking/disliking or "following" social media activists

Director Qualifications

- In recent years, the “Big 3” have voted in line with board recommendations on approximately 95% of management proposals and 75% of shareholder proposals
- At the same time, they have scrutinized whether directors have the qualifications to exercise independent and effective oversight of the issues underlying these proposals
- As regulations evolve, politicization intensifies and financial, legal and reputational risks expand on various issues that are important to shareholders and stakeholders, companies are increasingly being asked to prove director qualifications or expertise, especially of longer-tenured directors
- The advent of universal proxy has made it easier for dissidents to target directors who are perceived as lacking necessary skills or experience
- It is not necessary (and may not be advisable) to recruit or train directors so that a company can check every box in a board skills matrix; however, in this environment, it is important for a company’s disclosures to reflect that the board as a whole has the range of skills and experiences that are most relevant to provide appropriate oversight of a company’s business and strategy

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